

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11

DVM, INC.

BKY 03-30053

Debtors.

UNITED STATES TRUSTEE'S RENEWED
MOTION TO DISMISS OR CONVERT CASE

TO: The debtor(s) and other entities specified in Local Rule 1204(a).

1. The United States Trustee, by his undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 3:00 p.m. on Tuesday, September 28, 2004, before the Honorable Gregory F. Kishel, Chief United States Bankruptcy Judge, Courtroom No. 228B, U.S. Courthouse, 316 N. Robert St., St. Paul, MN 55101.

3. Any response to this motion must be filed and delivered not later than September 23, 2004, which is three days, before the time set for the hearing, (excluding Saturdays, Sundays or Holidays) or filed and served by mail not later than September 17, 2004, (excluding Saturdays, Sundays or Holidays) which is seven days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Fed. R. B. P. 5005 and Local Rule 201. The United States Trustee has standing to file this motion pursuant to 28 U.S.C. Section 586(a) and 11 U.S.C. Section 307. This proceeding is a core proceeding. The petition commencing this chapter 11 case was filed on January 3, 2003. The case is now pending in this court.

5. This motion arises under 11 U. S. C. Section 1112(b) and Fed. R. B. P. 1017, 2002 and 4004. This motion is filed under Fed. R. B. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests that this case be converted to a case under chapter 7.

6. On or about September 12, 2003, the United States Trustee filed a motion to convert to chapter 7 this case. The motion was duly served on all parties in interest and was based on the debtor's failure to file monthly operating reports or to pay U.S. Trustee fees required by 28 U.S.C. §1930(a)(6). That motion was continued numerous times during the pendency of the case through the time of plan confirmation. Each continuance was made after the debtor filed the most recent operating reports and paid the required U.S. Trustee fees.

7. On June 8, 2004, the court entered an order confirming the debtor's May 5, 2004, reorganization plan. That plan provided, *inter alia*, that the debtor would pay all U.S. Trustee fees due and owing pursuant to 28 U.S.C. §1930(a)(6) for so long as the case remained open. The plan further provided that the debtor would file with the U.S. Trustee Monthly Operating Reports in the format prescribed by the U.S. Trustee until such time as the case was closed. See Plan, May 5, 2004, Art. II(d), Page 3, (Docket #56).

8. The U.S. Trustee had also objected to plan confirmation due to debtor's failure to file Monthly Operating Reports and failure to pay U.S. Trustee fees. See Docket #60. At the confirmation hearing on the record, the U.S. Trustee withdrew his objections to confirmation. However, the U.S. Trustee was

given the option of putting his motion to convert back on for hearing only if the Debtor did not submit the necessary reports to the U.S. Trustee, as indicated on the record at the hearing. The opportunity for the U.S. Trustee to renew this motion to convert is set forth on the Minute Sheet from the June 8, 2004, hearing. See Docket # 61.

9. Subsequent to plan confirmation the U.S. Trustee sought payment of the U.S. Trustee fees and filing of the Monthly Reports. The U.S. Trustee sent letters to counsel for the debtor on June 9, 2004, August 13, 2004, and August 20, 2004. See attached. The debtor failed to respond to those letters.

10. At the present time, the debtor has failed to file Monthly Operating Reports, or to otherwise verify disbursements, for the months of May and June 2004. The debtor also appears to have underpaid U.S. Trustee fees by \$2,500.00. (The underpayment calculation is assuming that the disbursements for those months are similar to prior months).

11. The court, On August 31, 2004, entered an Order to Facilitate Closing of Chapter 11 Case. (Docket #79). Upon the entry of an order closing the case, the court will no longer have jurisdiction over the debtor's assets or estate and the U.S. Trustee will be unable to collect the fees owed.

12. The debtor's failure to pay U.S. Trustee fees is independent cause to convert under 11 U.S.C. §1112(b)(10). In addition, the failure to pay the fees and file the reports constitutes an inability to effectuate a plan and an inability to effectuate a substantial consummation of a plan, both of which are cause to convert the case under 11 U.S.C. §1112(b)(2) & (7).

13. Based on the debtor's failure to consummate the plan and failure to comply with its terms, cause exists to convert the case to chapter 7.

14. The debtor is not a person described in Section 1112(c). The debtor is eligible to be a debtor under chapter 7.

WHEREFORE, the United States Trustee hereby renews his motion for an order converting the case from chapter 11 to chapter 7. The U.S. Trustee submits that the court should immediately enter an order converting the case to chapter 7.

HABBO G. FOKKENA
United States Trustee
Region 12

Dated: September 9, 2004

By: e/Michael R. Fadlovich
Michael R. Fadlovich
Attorney/Advisor #158410
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
612/664-5500



FILE COPY

U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

U.S. Courthouse, Suite 1015

612 / 664-5500

300 South Fourth Street

FAX 612 / 664-5516

Minneapolis, MN 55415

June 9, 2004

Mary Jo Jensen-Carter, Esq.
Buckley & Jensen
1339 East County Road D
Vadnais Heights MN 55109

RE: DVM INC
BKY No. 03-30053

Dear Ms. Jensen-Carter:

The above captioned debtor's Chapter 11 Plan of Reorganization was confirmed by order of the bankruptcy court on June 8, 2004. Pursuant to 28 U.S.C. Section 1930(a)(6), they will continue to be liable for Chapter 11 quarterly fees for all quarters in which their case is open in the bankruptcy court.


Chapter 11 monthly operating reports must be filed for every month or partial month up to the date of confirmation. Thereafter, they must file a Summary of Cash Receipts and Disbursements For Quarter every quarter until their case is closed by the bankruptcy court. This report is due in our office on the fifteenth of the month following the end of the quarter. I enclose a copy of a Summary of Cash Receipts and Disbursements to be used as a master form.

Should you have questions about this matter, please do not hesitate to contact me or Cheri LeVoir at 612/664-5511. Thank you.

Sincerely,

Habbo G. Fokkena
United States Trustee
Region 12

By:


Sarah J. Wencil
Trial Attorney

SJW:cl
Enclosures



FILE COPY

U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

U.S. Courthouse, Suite 1015

612 / 664-5500

300 South Fourth Street

FAX 612 / 664-5516

Minneapolis, MN 55415

August 13, 2004

Mary Jo Jensen-Carter, Esq.
Buckley & Jensen
1339 East County Road D
Vadnais Heights MN 55109

RE: DVM INC
BKY NO. 03-30053

Dear Ms Jensen-Carter:

The Chapter 11 Plan of Reorganization for the above-mentioned debtor was confirmed by an Order of the Bankruptcy Court dated June 8, 2004. Our letter dated June 9, 2004 stated that they must continue to file a quarterly "Summary of Cash Receipts and Disbursements" up to the date of their case is closed by the Bankruptcy Court. A copy of that form to be use as a master is enclosed.

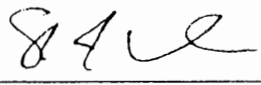
Our records show that we are missing their quarterly summary for the period ending June 30, 2004.

Please have your clients forward the missing quarterly summary reports to our office

Sincerely,

Habbo G. Fokkena
United States Trustee

By:



Sarah J. Wencil
Trial Attorney

SJW:cl

cc: DVM Inc



FILE COPY

U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

612 / 664-5500
FAX 612 / 664-5516

August 20, 2004

Mary Jo Jensen-Carter, Esq.
Buckley & Jensen
1339 East County Road D
Vadnais Heights MN 55109

Re: DVM INC
BKY No. 03-30053

Dear Ms Jensen-Carter:

Based on the disbursements listed on their Monthly Operating Reports, it appears that your above mentioned clients have underpaid the chapter 11 quarterly fees for the **second quarter 2004**. We also still have not received their "Summary of Cash Receipts and Disbursements for the Quarter ending June 30, 2004".

Enclosed is a financial summary showing disbursements, chapter 11 quarterly fees due, the fees paid and total fees now due.


I enclose a Chapter 11 Disbursement and Fee Report form and an Information and Instruction sheet. Please return the form with a check in the amount of the total underpayment due made payable to "United States Trustee" to my attention at the above address within ten (10) days. (Fees for future quarters should be sent in the appropriate amount to Atlanta, GA as instructed). If I do not receive payment within this time, I will take appropriate action which may include a motion to dismiss or convert this case pursuant to 11 U.S.C. §1112(b)(10).

By copy of this letter, I request that you contact your clients immediately to rectify this problem by the deadline stated above.

Sincerely,

Habbo G. Fokkena
United States Trustee
Region 12

By:


Sarah J. Wencil
Trail Attorney

SJW:cl
enclosure
cc: DVM Inc

DVM INC FINANCIAL SUMMARY

QTR	ACCOUNT NUMBER	DEBTOR NAME	STA #	DATE FILED	DATE CLOSED	CLSD STAT	DATE BY COURT	MONTH 1 DISBURSEMT-1	MONTH 2 DISBURSEMT-2	MONTH 3 DISBURSEMT-3	QTR DISBURSE TOTAL	FEE DUE	FEE PAID	FEE OWE
2003-1	6430330053	DVM INC	5813	03-Jan-03	08-Jun-04	CPC		\$432,195.00	\$334,747.00	\$355,077.00	\$1,122,019.00	\$5,000.00	\$5,000.00	\$0.00
2003-2	6430330053	DVM INC	5813	03-Jan-03	08-Jun-04	CPC		\$364,276.00	\$301,291.00	\$290,701.00	\$956,268.00	\$3,750.00	\$3,750.00	\$0.00
2003-3	6430330053	DVM INC	5813	03-Jan-03	08-Jun-04	CPC		\$302,060.00	\$244,081.00	\$278,898.00	\$825,039.00	\$3,750.00	\$3,750.00	\$0.00
2003-4	6430330053	DVM INC	5813	03-Jan-03	08-Jun-04	CPC		\$425,680.00	\$290,643.00	\$366,734.00	\$1,083,057.00	\$5,000.00	\$5,000.00	\$0.00
2004-1	6430330053	DVM INC	5813	03-Jan-03	08-Jun-04	CPC		\$383,473.00	\$337,774.00	\$383,084.00	\$1,104,331.00	\$5,000.00	\$5,000.00	\$0.00
2004-2	6430330053	DVM INC	5813	03-Jan-03	08-Jun-04	CPC		\$290,545.00			\$290,545.00	\$3,750.00	\$1,250.00	\$2,500.00

Account ReconciliationReconcil
(11/13/2002)

Field Office: 12 01 Minneapolis MN

Case #: 643-03-30053

CPC: 06-08-2004 OCS:

CDC:

CTO:

Billed (\$): 26,250.00

Debtor: DVM INC,

CNV:

CBC:

Paid (\$): -23,750.00

CNC (\$): 0.00

Write Off (\$): 0.00

Balance (\$): 2,500.00

Opened: 01-03-2003

Closed:

Quarter	Disbursements(\$)	Fee(\$)		Batch	Date	Type Code	Payment(\$)
1-2003	1,122,019	5,000		63-017	05-06-2003	PMTLB	-5,000.00
2-2003	956,268	3,750		05-016	08-21-2003	PMTLB	-5,000.00
3-2003	825,039	3,750		63-003	11-05-2003	PMTLB	-5,000.00
4-2003	1,083,057	5,000		60-024	02-20-2004	PMTLB	-2,500.00
1-2004	1,104,331	5,000		60-003	03-05-2004	PMTLB	-1,250.00
2-2004		3,750 Est		.61-012	06-14-2004	PMTLB	-3,750.00
				60-004	07-23-2004	PMTLB	-1,250.00

VERIFICATION

I, Michael R. Fadlovich, attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: September 9, 2004

Signed: e/Michael R. Fadlovich

MICHAEL R. FADLOVICH

Attorney/Advisor

CERTIFICATE OF SERVICE

In Re:)	
)	
DVM, Inc.		Bankruptcy No. 03-30053
)	
Debtor(s).)	Chapter 11 Case
)	
)	

I, Terri Frazer, declare under penalty of perjury that on September 9, 2004, I served a copy of the foregoing US Trustee's Renewed Motion to Dismiss or Covert Case by U.S. mail, postage prepaid, to each person named below:

FORD MOTOR CREDIT CO
C/O STEWART ZLIMEN & JUNGERS LTD
430 OAK GROVE ST STE 200
MINNEAPOLIS MN 55403

WILLIAM I KAMPF
HENSON & EFRON PA
220 SOUTH SIXTH STREET STE 1800
MINNEAPOLIS MN 55402

VISTAR CORPORATION
ATTN: KATHRYN A KRAUSE
PO BOX 1268
8555 REVERE LN STE 100
MAPLE GROVE MN 55311-6268

HAPP CONTROLS INC
106 GARLISCH DR
ELK GROVE VILLAGE IL 60007

PATRICK J SHAUGHNESSY
5112 CEDAR LK RD
MINNEAPOLIS MN 55416

JEFFREY W THONE
CRAGG & THONE
1011 1ST ST S
HOPKINS MN 55343

FORD MOTOR CREDIT
1409 N MOUNT AUBURN RD
CAPE GIRARDEAU MO 63701

GMAC
3500 W 80TH ST
MPLS MN 55431

MUSIC FINANCE COMPANY
9549 PENN AVE SOUTH
BLOOMINGT9ON MN 55431

MUSIC FINANCE COMPANY
C/O STEVEN G POTACH
5420 WELLS FARGO CENTER
90 S 7TH ST
MPLS MN 55402

IRS DISTRICT DIRECTOR
STOP 5700
316 NORTH ROBERT STREET
ST. PAUL, MN 55101

IRS OFFICE OF CHIEF COUNSEL
650 GALTIER PLAZA
380 JACKSON STREET
ST. PAUL, MN 55101

MINNESOTA DEPT. OF REVENUE
COLLECTIONS ENFORCEMENT UNIT
BANKRUPTCY SECTION
P.O. BOX 64447
ST. PAUL, MN 55164

SECURITIES & EXCHANGE
COMMISSION
175 WEST JACKSON BLVD, SUITE 900
CHICAGO, IL 60604

STEVEN OPHEIM
DUDLEY AND SMITH PA
2602 US BANK CENTER
101 EAST FIFTH STREET
ST PAUL MN 55101

ROYLENE A. CHAPEAUX
US ATTORNEYS OFFICE
600 UNITED STATES COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS, MN 55415

MARY JO JENSEN-CARTER
1339 EAST COUNTY RD D
VADNAIS HEIGHTS, MN 55109

CITY OF ST PAUL
C/O OFFICE OF LIEP
ROGER CURTIS DIRECTOR
350 ST PETER STREET, SUITE 300
ST PAUL MN 55101

Dated: _____

9-9-04

By: _____

Lew Fager
Office of the United States Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11

DVM, INC.

BKY 03-30053

Debtors.

O R D E R

At St. Paul, Minnesota, this ____ day of _____, 2004.

This matter came before the Court for hearing on the hearing on the renewed motion by the United States Trustee for an order converting the case to chapter 7. Michael R. Fadlovich appeared on behalf of the United States Trustee. Other appearances were noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure 7052. Based on those findings, it hereby ORDERED:

That pursuant to 11 U.S.C. §1121(b), this case is hereby converted to a case under chapter 7.

GREGORY F. KISHEL
Chief United States Bankruptcy Judge